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IN THE

Supreme Court of the United States

October Term, 1958

No. 422

PERFECT BRASSIERE CO., INC.,
Petitioner,

against

PERFECTFORM CORPORATION,
Respondent.

REPLY BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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The reply brief of the petitioner is obviously misleading. Respondent's second cause of action, as has been set forth in its reply brief, admittedly has nothing to do with the Lanham Act. This does not mean that the federal district court lacks jurisdiction. 28 U. S. Code 1338(b) provides that the district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent or trademark laws. In this case, the very first paragraph of the third circuit opinion sets forth the circumstances under which the federal court has jurisdiction.

> "Appellant sued for Lanham Act (15 U. S. C. § 1051 et seq.) trade-mark infringement and for unfair competition under 28 U. S. C. 1338."

Respondent's first cause of action under the Lanham Act has been remanded to the district court for further findings. Up to now, petitioner has never contended that the federal district court lacked jurisdiction.

As to the petitioner's charge of "impassioned irrelevancy", it is notable that it still does not deny that it deliberately and conclusively made a substantial replica of the respondent's trademark and applied it to its own goods. This simple statement is not uttered in a state of passion and it is certainly relevant.

Jurisdiction under the above circumstances is obvious.

Dated: New York, December 10, 1958.

Respectfully submitted,

S. Stephen Baker,
Counsel for Respondent.